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Mr. HILLHOUSE'S SPEECH, IN THE SENATE,

DECEMBER 21, 1900



JUN 11 1935

*On the Bill making further provision for enforcing
the Embargo.*

MR. PRESIDENT,

Before I proceed to remark on the merits of the bill under consideration, I shall take the liberty of noticing some general observations of the gentleman from Virginia, (Mr. Giles) which can have no bearing on the matter under consideration, and could have been thrown out for no other purpose, than to impress the idea, that the opposers of this bill and of the embargo are acting under some undue influence or bias, and are endeavoring to obstruct or paralyze the energies of the nation in their operations against foreign aggression. We are told of British capital, British agents, British gold; in too close connexion with the opposition to the embargo and the present bill. Sir, if it is meant to insinuate that the opposers of the embargo and of this bill are under such influence, I despise the insinuation. (Mr. Giles rose and declared he did not mean to throw out the smallest intimation that the opposers of the bill were under such or any other improper influence.) The character and conduct of the greater part of that description of our fellow-citizens, who have been and still are opposed to the embargo, furnish a sufficient answer to any such insinuations as to them. No, sir, our opposition to the embargo proceeds from far different motives; from a thorough conviction of its inefficacy as regards foreign nations, and its ruinous operation as to ourselves. We are not willing to inflict a wound on our own country, because foreign nations do us wrong.

The gentleman from Virginia has renewed his call for a substitute for the embargo. Sir, the embargo admits no substitute. It is a measure radically wrong, and stands in the way of every proper measure.... Remove the embargo, and then, and not till then, will the way be open to adopt measures for securing our commerce and defending our rights. I am not a little surprised that the gentleman from Virginia could make up his face to such an imposing call. Had that gentleman run through the journals, from which he has read some passages, he would have found, that during a long and uniform course of opposition to a former administration, which was conducted with acknowledged ability, he was not in the habit of proposing substitutes. He told us what *would not*, but not what *would do*. In the present case, were the embargo out of the way, and I found a disposition to listen, I should not hesitate to express my opinion of

the proper course to be pursued. But so long as our national councils are under the *Embargo* ~~any~~ attempt at other measures would be unavailing.

For the purpose of contrasting the present proceedings of Congress with what was done in 1794, the gentleman from Virginia read from the journals some passages to shew "that the nation then moved in a solid body." Yes, sir, the unanimity and spirit then manifested, does honor to the nation. But with whom were we contending then? With England. I should have been much gratified if the journals of 1798 (which the gentleman did not think proper to read) had exhibited the same unanimity and spirit, when our rights were violated by another power, and we were insulted by the contemptuous rejection of our ministers. Far otherwise was the fact: there was then a violent and persevering opposition to the measures of defence then proposed and adopted; and by the same description of men who claim credit for a pre eminent share of patriotism a conduct to which I advert with reluctance. I was ready to vindicate our rights against England in 1794, and at a *much earlier period*: I was equally ready to do the like against France in 1798. It matters not to me from what nation injury or insult comes, I am ready to take sides with my country in repelling it.. not indeed by an *embargo*, but by any measures of *energy* which policy or prudence shall dictate. I have never shrunk from taking my full share of responsibility, when called to act on great national questions. I leave it to those who have known and observed my public conduct, to decide, whether I have manifested much solicitude to find out which would be the popular side. I, sir, am under no apprehensions of being suspected by those who know me, of acting under foreign or any improper influence. My opposition to the bill does not proceed from a wish to shield from punishment the violaters of the embargo; those corrupt agents and friends of Britain, as the gentleman has described them. My opposition to the bill proceeds from an unwillingness to see the liberties of my country prostrated by a *military despotism*; the foundation of which I clearly discern in this bill. Says the gentleman from Virginia, the Senate have declared, they will not repeal the embargo; and they are now called upon to say it shall not be enforced...not so, the call is, that it should not be enforced by improper means...means which endanger liberty and violate the constitution. Better that the embargo should not be executed than that the constitution of the United States should be violated.

I extremely regret that the gentleman from Virginia should have felt himself at liberty to travel out of his way to cast reproach on the judiciary. The judges, by a faithful discharge of their duty (sometimes being obliged to withstand popular error, and sometimes to interpose themselves between a defenceless individual and executive power) are exposed to their full share of opprobrium. No reproach for the rejection of the bill to suspend the *Habeas Corpus* can fall on the judges; they had no agency in the business. I have indeed felt, sensibly felt the reproach cast upon the senate for having passed

that bill in so hasty a manner ; but it was not slanders contained in newspaper paragraphs which I regarded...they have no more effect on my mind than the passing wind. It was the manner in which that bill was treated by the House of Representatives, that wounded my feelings...I felt for the honor of the Senate. I voted with the gentleman from Virginia for that bill, though I did not at the time feel all the apprehensions which seemed to be impressed on his mind. I did not apprehend that a rebellion excited by an individual not clothed with any official consequence or power, without resources, and almost without friends, could ultimately endanger the safety of the Union. But from the communications made to Congress by the President, I was led to believe there was some treasonable proceeding and rebellion which ought to be speedily and promptly resisted and put down. Though I did not see the necessity of passing the bill with so much haste as to subject the Senate to the charge of precipitation...yet being satisfied of the propriety of passing such a bill, I felt a reluctance, as I always do, at interposing my vote in a manner that may have even the appearance of throwing difficulties in the way of measures which regard the public safety. But no motives of delicacy, or any other cause, will prevent my opposing measures I think wrong in principle. The loss of the bill to suspend the Habeas Corpus was in no respect attributable to the Court or the Judges. There was no interference on their part, nor any conduct of theirs that could warrant the gentleman from Virginia in making the heavy charge "that the hostile propensities of a court against its own country and its own government, were the reasons why treason escaped punishment." In what instance have the judges interposed a shield between guilt and punishment? The principal leader in that rebellion was apprehended and taken to Virginia ; and I rejoiced, at the time, that Virginia was to be the place of his trial ;...so that no suspicion might exist of a disposition to favor his escape from conviction and punishment. Aaron Burr was acquitted...whether from a defect in the law or testimony, I am not sufficiently informed to decide. But I have no hesitation in declaring it as my opinion, that it was not owing to any indisposition in the judge to do his duty ; on the contrary, I think he manifested great integrity and firmness in adhering to the established rules of proceeding in criminal trials, which are the great shield of innocence against oppression ; and in giving a fair trial to a political opponent, against whom the popular current ran high, and whose prosecution was aided by executive influence and power. The opinions of the judge are in print, so that every one can examine for himself, and form his own. Thus much I may venture to say, that the gentleman from Virginia would find it no easy task to point out errors.

It is cause of regret when an individual, and much to be lamented when a public body become so zealously engaged in the pursuit of an object, as not to examine with candour the propriety or expediency of the measures by which such object is to be attained. In the present case, I fear that a zeal to enforce the embargo has blinded the eyes of some to the consequences likely to follow from the course of mea-

sures now pursued. I fear also, that an error has been committed in pointing the debates and measures at a particular portion of the Union...as if violations of the embargo were confined to that quarter. Think ye that the people of Vermont and Massachusetts have been *sinners* above all the people of the United States? Have there been no violations of the embargo except in New-England? Yes verily. The only difference is, that on Vermont has fallen that *political tower of Siloam*, the President's proclamation. On the coasts of Massachusetts, and the states north of the Chesapeake, almost the whole of our naval force has been sent to cruise, to detect and punish the transgressions of their citizens. This has given an opportunity to the southern states to violate the embargo with impunity. It has been and still continues to be violated, even in that great and respectable state, represented in part by my brother Farmer (Mr. Giles) ;... which state, he has assured us, not only acquiesced in, but applauded the embargo, as a wise and salutary measure. To shew that I am correct, I will communicate to the Senate some information. One of the committee who had a principal hand in drawing the bill, stated, that he was informed by the Captain of a coaster (on whose information I should rely, being acquainted with him, and esteeming him a man of truth, and who had the means of knowledge, being employed in navigating up and down the Potomack) that there was a great display of activity and exertion in transporting the produce of the country, particularly flour, to the banks of the river, and shipping it off for other markets. Confirmatory of this I hold in my hand other information..." Capt. Scovel, who arrived (at New-York) yesterday, " (December 12th) from St. Pierres, Martinique, and Antigua, states " to us, that vessels which daily arrived in *distress*, in the ports he " visited, were almost exclusively from the southern ports, and the greater " number from the state of Virginia, laden with flour and other pro- " visions."...Again :..." Capt. Scovel who arrived here (at N. York) " last Monday, (Dec. 12) from Martinique, via Antigua and St. " Kitts, informs us, that while he lay at Martinique, a Virginia pi- " lot-boat schooner arrived there with 750 barrels of flour, which " the Captain sold for \$30 per barrel...that while at Antigua, in the " course of four days only, three vessels came in there with full car- " goes of flour from Virginia...that he saw at St. Kitts a Virginia " schooner that had been at Barbadoes with a cargo of flour, sold part, " and then came to St. Kitts with the remainder for a better market." The Secretary of the Treasury informed that the flour which had accumulated in the great flour markets of the United States, was gone; what has become of it? I have heard of no bonfires, except in one instance, to consume some imported gin. One circumstance strongly impresses on my mind a belief, that the products of that state, Virginia, and even the article of tobacco, have found their way to foreign markets; which is, that flour and tobacco, at a particular period during the last summer, when the embargo was in full operation, rose to a handsome price, and that some of her citizens of distinguished rank, were so fortunate as to avail themselves of that price. The gentleman from Maryland (Gen. Smith) also stated sun-

dry violations of the embargo. From which, and other information, I am induced to believe, that there are not many states in the union where the embargo has not been violated. The use I wish to make of this information is, to shew that this measure is not to have a limited or local operation; but is to pervade our whole country, and may affect every citizen of the United States. Let me therefore entreat this Senate to consider well before they give their sanction to a bill which is to have such a *general* operation; a bill which contains such *novel* and *extraordinary* provisions; a bill which may *endanger* civil liberty, and lay the *foundation* of a *military despotism*.

On the recommitment of the bill, one very obnoxious paragraph was stricken out, and others were altered. Some of the paragraphs I shall pass by without notice. The first to which I shall ask the attention of the Senate, is the 2d section. That places the whole trade and intercourse between the states, at the arbitrary will and pleasure of the president, collectors and special revenue officers; there being no rule laid down by which their discretion is to be governed. And who are these collectors and revenue officers, who are to be entrusted with such unlimited power? Not judges holding their offices independent of the Executive will, and free from Executive influence. They are the mere creatures of the executive, who are killed or made alive by the breath of the President.

This section provides that it shall not be lawful to put on board any ship, vessel or boat, of any description whatever, any specie, or goods wares or merchandize, either of domestic or foreign growth, unless a permit particularly stating the articles thus to be laden, shall have been previously obtained from the collector of the district in which such ship, vessel or boat may then be, or from a revenue officer specially authorized by such collector to grant such permit; nor unless the lading shall be made under the inspection of a proper revenue officer; nor unless bonds with surety to the amount of *six times* the value of the vessel and cargo shall be given for relanding the whole cargo in the U. S. And it is made lawful for the collectors to refuse permission to put any cargo on board, whenever in *their opinion* there is an intention to violate the embargo; or whenever they shall have received instructions to that effect, by direction of the President of the U. S. A proviso excepts from the operation of this section, the *bay* and *river craft*. The bond demanded is excessive and oppressive. There is no rule laid down by which the discretion of the collectors or revenue officers is to be governed; or to point out to the citizens of the U. S. what they may expect or claim as a right. The permit may be refused altogether, upon the mere suspicion or jealousy of the officer, however unfounded. What a door is here opened for partiality and favoritism, and to gratify party feelings and party animosities? And have we not reason to believe it will, in many instances, be improved for the most oppressive party purposes?

Sect. 4th places the bay and river craft under the like arbitrary discretion of the collectors; who are authorized to grant, under such general instructions as the President of the U. S. may give, general permission, *when it can be done without danger of the embargo*

being violated, to take on board, at any time, such articles of domestic or foreign growth as may be designated in such permit; bond with surety being previously given in an amount equal to three hundred dollars for each ton, conditioned that every article taken on board shall be reloaded in the U. States, and that such vessel shall not be employed in any foreign trade &c.

When the regulation of the whole commerce and intercourse between the different states, is placed at the arbitrary discretion of such an host of collectors, without any specific rule laid down in the law by which they are to govern their conduct; will there not, under this act, if it should pass, be danger, will there not be a certainty, that different collectors will adopt different rules? and that different and greater restrictions will be put upon the commerce of some states than others? which would be a violation of that clause of the constitution which says, "that no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another."—This clause of the constitution renders it indispensable that Congress should by law prescribe the rules by which commerce is to be regulated, that they may be certain, specific, and uniform in all the states. There was an inequality in the regulations of last summer. The governors of some of the states were authorized to grant permits to import flour: a like indulgence was not extended to the governors of other states. In some states permits would be very liberally granted; in others the collectors would be rigid, and stop nearly all the trade of a state.

The 5th section subjects innocent persons to penalties, confound innocence and guilt, involving both in one common punishment. After declaring the forfeiture of the ship, vessel or boat, together with the specie, goods, wares and merchandize taken on board, contrary to the provisions of the third section of this act, it goes on to say, that the owner, or owners, agent, freighter or factor, master or commander of such ship, vessel or boat, shall moreover *severally* forfeit and pay a sum equal to the value of the ship, vessel or boat, and of the cargo put on board the same. By the provision of this section, the inquiry before the Court and Jury will be, not whether the person accused has been concerned in a violation of the embargo, but whether he be an owner, agent, freighter, factor, master, or commander of such ship, vessel, or boat; and he may have been ignorant of any intention to violate the law; nay more, tho' opposed to such violation, he is to be adjudged guilty and subjected to punishment. But, says the gentleman from Va. this is no new principle, it has already been introduced and recognized by the revenue laws. To prove this, and that collectors are thereby authorized to search for and seize goods, he read the 68th and 69th sections of the collection law, of March 2d, 1779.* The great and leading principle of the revenue law is, that the penalty operates on the *property* in all cases except where a person is negligent, or knowingly guilty of a violation of the law; in which case there is superadded a personal penalty. For example, a captain who neglects or refuses to enter his vessel, or makes a false entry, or attempts to run

goods and avoid the payment of duties, the vessel and goods are declared forfeit, and the captain and other persons concerned in such violation of the law, subjected to a penalty; but in no instance is the owner, agent, freighter or factor, who has no knowledge of such violation, subjected to a penalty. True it is, the innocent owner may be subjected to the loss of his vessel and goods; but that goes upon an entirely different principle; which is, that the owner is responsible for the good conduct of his captain or agent, so far as the property goes that he entrusts in his hands. But it was reserved for this bill to introduce into our code the criminal principle that an innocent man is to be arraigned, found guilty and punished, merely for being an owner, agent, freighter or factor. This is a principle that would disgrace the most tyrannical code of the most tyrannical government that ever existed.

Section 6, subjects the *reputed* owner to the same forfeitures and penalties as are inflicted on the *real* owner in the preceding section. So that an innocent person is not only liable to the charge of a crime, but to a conviction and punishment, because his name happens to appear on a certificate of registry, enrollment or licence, or on the last clearance or custom house document, though he may have no interest or property whatever in the ship or vessel that shall violate the law, and no knowledge of such violation, or of any intention to violate the law. This same section establishes unwarrantable restrictions on the sale and transfer of property. For it is provided that no sale shall be recognised or rendered effectual, until a bond shall be given equal to 300 dollars for each ton of such ship or vessel so proposed to be sold, conditioned that such ship or vessel shall not, during the continuance of the embargo, contravene or infringe any of the provisions of the said acts. A vessel of one hundred tons burthen cannot be sold without entering a bond of 30,000 dollars—an enormous bond, which very few, if any, such owners would be able to obtain, though under the most pressing necessity of selling to obtain the means of subsistence, or bread for his family. Who would entangle his fortune with such a bond? Let me ask the gentleman from V. whether even to oblige a suffering neighbour, he would pledge his farm and mills by entering into such a bond? I have too good an opinion of his prudence and foresight, to believe he would thus encumber the place of his dignified retirement with such a bond; and if his patriotism would not induce him to give such a bond, who is there that would do it? As well might Congress pass a law declaring it unlawful to sell at all, as to pass this law; for it is an indirect mode of doing the same thing. And has the constitution given to Congress any such power? If we are doomed to stultify under the embargo system, it is better far to stop the coasting trade altogether, and chain our coasters, as are our other vessels, to rot at our wharfs, than to disgrace our country by such an act. An act which only tantalizes our citizens with the shew of a coasting trade, when by requiring excessive bonds, imposing burthensome restrictions, and submitting the whole to the arbitrary discretion and caprice of a host of collectors, it will in fact be annihilated.

that, or nearly so; an act which, under pretence of regulating the sale of vessels, has required a bond which, in its operation, would in most cases amount to an absolute prohibition. An act which opens a door for the most wanton favouritism and cruel oppression: an act which violates some of the most important principles of justice.

The 7th section contains a most extraordinary provision, a provision which virtually goes to deprive the party of his right of trial by jury, an impartial jury of the vicinity, before whom the party would have it in his power to adduce evidence, and make his defence. By this bill, the final decision, whatever it may be, is referred to the Secretary of the Treasury; an executive officer holding his office at the pleasure of the President, and residing in this city, the seat of the general government, which, as regards the convenience of a great portion of the citizens of the United States, is a *distant land*. The section provides that in all suits on bonds given by virtue of this or any of the embargo acts, conditioned that goods, wares, or merchandize, or the cargo of a vessel shall be relanded in the U. States, judgment shall be given against the defendant, unless proof shall be given of such relanding, or the loss of the vessel at sea. But neither *capture, distress, or any other accident whatever*, shall be pleaded or given in evidence in any such suit. What possible difference can there be between depriving a party of his trial by jury altogether, and precluding the evidence necessary to his defence and the establishment of his innocence. It is an axiom admitted in all codes, that the act of God shall prejudice no man. But by this bill, if a vessel bound, for example, from New-York to New-Haven, should have a single hogshead of rum on board, and in a thunderstorm this should be set on fire and consumed, and the vessel fortunately escape, by the provisions of this bill, because the *relanding* of the rum, or the *loss* of the vessel cannot be proved, judgment is to go on the bond; although the defendant has the most incontrovertable evidence to prove the above fact (the destruction of the rum) a complete *defence* at law...not by *custom house oaths*, of which the gentleman from V. seems to think so lightly (and which I am sorry he should disparage, as on them depends much of our revenue) but by the oaths of the most respectable characters of our country, who may be on board, and eye witnesses of the fact; nay, it might happen to be the gentleman himself. Another case...in a storm, to save the vessel and their lives, the crew and passengers throw overboard a cargo of flour, or such as may be on deck and in the way of working the ship:... proof of this is not to be admitted before the Court and Jury, but judgment is to be rendered against the defendant. Many other such like cases might be put equally strong. Article 7 of the amendments to the constitution provides, that "where the value in controversy shall exceed twenty dollars, the right of trial shall be preserved." Two of the prominent articles of grievance set forth in the declaration of independence, are in these words:

"For depriving us in many cases of the benefit of trial by jury."

"For transporting us beyond the seas, to be tried for pretended offences."

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To deprive the party of the right to plead or give in evidence what would establish his innocence, is to deprive him of his trial ; to require a court to render judgment on a bond against the defendant, who is prepared and offers his plea and evidence, to establish a complete and legal defence before a Court and Jury, is to deprive him of his trial by Jury, and is a denial of justice. And to send a defendant thus condemned to the city of Washington to obtain relief is indeed sending him " to be tried for pretended offences." But, says the gentleman from V. by the humane provision contained in the twelfth section, the person thus unjustly condemned may escape the penalties of the law. And how ? By conforming to the law of March 3d, 1797, which provides for mitigating or remitting forfeitures, penalties and disabilities. That is, by going hundreds of miles from his own home to the City of Washington (little less inconvenient than a voyage across the Atlantic) there to appear, not before an impartial tribunal, composed of judges and jurors of his own vicinity, free from all executive influence and party bias ; but before the Secretary of the treasury, holding his office at the will of the Executive...not in the manly attitude of a citizen bold in conscious innocence, to defend his character against the imputation of being a violator of the laws of his country...but in the attitude of a suppliant, against whom judgment has already been pronounced ; humbly praying, on the bended knee, for the remission of the penalty of the law ; which he can claim, not as matter of right, but of grace. Is it possible that free born Americans can submit to such indignity ? Is it thus that the *character*, the *feelings* and the *innocence* of the American people are to be made the *sport* of an embargo system ? No sir, pass this law, and that system now oppressive will become *odious*, more odious if possible than were the measures of the British Parliament which drove us into the revolution, induced us to bear all the hardships of a long war, and severed the colonies from the parent country.

Sect. 9.—Authorizes the collectors to seize or take into their custody, without warrant, without evidence, and at their own discretion, specie, or any article of domestic growth, produce or manufacture, when there is reason to believe they are intended for exportation ; or when in vessels, carts, waggons, sleighs or any other carriage, or in any manner apparently on their way towards the territory of a foreign nation, or the vicinity thereof, or towards a place whence such articles are intended to be exported. This seizure may be made, not only on board a vessel, but on the land ; not only in a cart, waggon, or sleigh, but wherever they may be ; provided there is reason to believe they are intended for exportation. Money is not kept in the highway or open field ; but in a house, in a desk or private drawer ; flour and other articles of produce are not kept in a situation to be exposed to the weather, or other injury, but in warehouses or stores : when, therefore, an authority is given to take these articles, when the collector believes they are intended for exportation, it is to take them where they are usually kept and may be expected to be found. My house, I have always been taught to believe, was my castle, my sanctuary, where myself and property could remain

in perfect security; unless I should have forfeited the privilege by some crime against the state. But are we not about to declare, by this bill, that a collector, and without any warrant from a civil magistrate, and merely on the ground of his own suspicion, and governed only by his own discretion, may enter my enclosure, my store, my dwelling house; and ther take into custody my money and other articles? That he may call the military to aid him in this work? In the progress of which, may not my private and most confidential papers be exposed? Do not these things tend to irritation, to resistance, to bloodsh J? Can such legislative provisions consist with a wise policy, with the principles of a free government, or the constitution of the U. States?

In article 4 of the amendments, it is provided, that "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized."

The gentleman from Va. here, as in other instances, rests his defence of this section on the law for the collection of the revenue, and particularly on the same 68 section, which has been read. True it is, that by that law the collector is authorised to go on board a vessel and make search or seizure without warrant; but the moment he sets his foot on the land, and wishes to make search or seizure, application on oath must be made to a magistrate for a warrant to be executed in the manner directed. There has always been a difference in the mode of enforcing the laws on board of vessels on the water, from what was admitted on the land; and less formality and caution has been observed in making search and seizure on board of vessels than what is required on the land, in our stores and dwelling houses. For the purpose of executing the law of nations on the high seas, commercial regulations and the collection of revenue, it has been found necessary, at all times, to subject vessels to the inconvenience of being liable to search and seizure without warrant and without much formality. A great discrimination has always been made between vessels and houses.

There is another manifest distinction between seizures under the law for collecting revenue, and the present bill; there the articles seized are claimed to have become forfeited; but by the present bill there is a bare suspicion that they are about so to be proceeded with as that they may become forfeited. Under those laws the property is immediately placed in the custody of the law, and under the jurisdiction of a Court of Justice; where the claimant can have a trial, and if he can make out a well founded claim, is entitled to a restoration of his property. By this bill, the property is held by the collectors, and the owner has no way of obtaining the same but by substituting a bond, with sufficient sureties (which the party may not be able to obtain) for the landing or delivery of the same in some place in the United States, where in the opinion of the collector, there shall not be danger of such articles being exported.

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When the collector has seized or taken money or other articles, it is made his duty to guard them; which must be done either in the place where taken, or in some other place to which he shall in his discretion remove them. And for the purpose of taking into custody and guarding specie or any other article, the 11th section authorises the President of the United States, or such other person as he shall have appointed, to employ the land and naval forces, or militia of the United States. Take either alternative, the law cannot be executed without a violation of the constitution. For suppose it to be money, and to avoid any question about an unreasonable search, we will suppose the collector present in my house, and sees me count and place a large sum of money in my desk, which he believes is intended for exportation in violation of the embargo, and makes a seizure, as would be his duty under this bill. If the money is not to be removed, he must, or may, introduce a soldier or soldiers into my house to guard it; which would be in direct violation of the 3d article of the amendments to the constitution, which says, "no soldier shall in time of peace be quartered in any house, without the consent of the owner; nor in time of war, but in manner to be prescribed by law." If the money is to be removed to some other (in the opinion of the collector) safe place, then is there a violation of the 5th article of the amendments, which says, that no person shall be "deprived of his life, liberty or property, without due process of law."

Sec. 10. Gives to the President's *instructions*, and the *rules* he may prescribe, the authority of *law*. Are we prepared for this, to authorise the President to make *proclamation laws*? In that section it is provided, that the powers given to Collectors "shall be exercised in conformity with such instructions as the President may give, and such general rules as he may prescribe for that purpose, made in pursuance of the powers aforesaid...which instructions and general rules the Collectors shall be bound to obey...And if any action or suit be brought against any Collector or other person acting under the directions of and in pursuance of this act, he may plead the general issue, and give this act and the instructions and regulations of the President, in evidence for his justification and defence." Neither in this or the former act is there any rule laid down by which the President's instructions are to be governed...consequently, they depend on his own arbitrary will and pleasure...and it is made the duty of the Collectors to pay implicit obedience to those instructions...and through the Collectors they are to operate upon the property and concerns of the people. There is no mode pointed out by which these instructions are to be promulgated and made known, as are the laws. By the constitution, all laws are to receive the sanction of the two branches of the legislature and be approved by the President. But according to this section, the President's instructions, proceeding from the recesses of the palace, and communicated only to the Collectors, are to have the binding force of law—are to affect the property and concerns of the citizens of the United States—are to controul the courts of justice—and thus violate that sanctuary which has always been esteemed a great bulwark to guard

the liberties of a free people. These instructions are to be given in evidence on any suit against the officer for his justification and defence. If the officer is bound to obey those instructions, the courts must necessarily be bound to receive them as evidence in justification of the Collector—the consequence necessarily follows that they must controul the courts of justice.

To support the principle of this section of the bill, the gentleman from Virginia has read to us a law of the United States passed in June, 1794, authorising the President to lay an embargo, provide the necessary regulations for carrying it into effect, and for revoking the same. † Whether I did or did not vote for that law I do not now recollect; the yeas and nays were not taken. But I have no hesitation in saying, that with my present impressions, I should under like circumstances, vote for such a law, either under the then administration or the present. We then had disputes with the British government, which, unless settled by the negotiation then pending, must terminate in war. We had adopted every defensive measure in our power, and Congress were about to adjourn, and wait the issue of the negotiation. If unsuccessful it might become necessary suddenly to stop our vessels in our harbors, previous to a declaration of war. Congress could not be convened, so as to pass a law, much short of two months. It resulted therefore, as a necessary consequence, that the power must be lodged some where; and where more properly than with the chief Magistrate? In my opinion, the power to lay an embargo is not given to Congress by that clause of the constitution which gives the power to regulate commerce; it is in direct hostility to commerce. The power to lay an embargo follows as a necessary appendage to the power of making war. The case might happen when even the commanding officer of the army might be justified in laying an embargo on all ships and vessels in certain harbors and rivers, when necessary to aid a military expedition then on foot. The Parliament of England have the sole power to regulate commerce; the King has the power of declaring war and of laying an embargo. But this is a power to be exercised with great caution; it is a measure temporary in its nature. The present is, I believe, the first experiment of a permanent embargo. It is a power, when given to the Executive, which is to be carefully guarded; as was the law in 1794; by which the President was not to lay an embargo when Congress were in session; nor that should continue in force but for a short time after Congress should convene.

To enable us to form a correct opinion in this case, it is proper to inquire what is an EMBARGO. An embargo, in its nature and legitimate import, is most emphatically a measure, not effecting the internal policy of a country, but operating upon the water, in relation to ships and vessels. Its proper element is the *water*, not the *land*: but Congress, during the last session and the present, have been labouring to convert this *water fowl* into a *land turtle*, which might creep into the inclosure of every man in the nation. Upon these principles, an embargo law, or resolution, would be very short, as was that in 1794. But in the present case, Congress have accumulated

one long intricate statute upon another, until the property of the whole country is involved within their grasp. In short, the effort has been to convert an *embargo* into a *non-exportation act*. In this, as in many other cases, a *wrong title* has been adopted; and from that circumstance arises much of our present embarrassment. Had the law of 1794, giving to the President of the United States, the power of laying an embargo, so confidently relied on by the gentleman from Virginia, as justifying the powers and principles of the present bill, contained *such powers*, and *such principles* it never would have had my support or my vote. It would have merited *conflagration*, and to have been burnt, as on another occasion was the law of a state, by no ordinary fire.

Mr. President, after enumerating such a catalogue of arbitrary restrictions, oppressive regulations, and unconstitutional provisions, comprised in this one bill, could it have been imagined that there was one objectionable section still left for consideration, more alarming than any that have preceded? One that makes a full stride towards the introduction of a *military despotism*. It is Section 11, which says, "That it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval force, or militia of the United States, or of the territories thereof as may be judged necessary, in conformity with the provisions of this and the other acts respecting the embargo, for the purpose of preventing the illegal departure of any ship or vessel, or of detaining, taking possession of, and keeping in custody any ship or vessel, or of taking into custody and guarding any specie or articles of domestic growth, produce or manufacture, and also for the purpose of preventing and suppressing any armed or riotous assemblage of persons resisting the custom-house officers in the execution of their duties, or in any manner opposing the execution of the laws laying an embargo, or otherwise violating, or assisting and abetting violations of the same." Here we see the military called on, in the first instance, to execute the laws—taking the lead under a military chief; not following in the train and under the direction of the civil magistrate, as ought invariably to be the case in a well regulated free government. Under such a government, the laws have always been carefully guarded, to keep the military in subordination to the civil power. Once permit the military to get the upper hand, and your liberties are gone. By this bill under whose direction is the military, in the bosom of a state, to be placed? not of the Chief Magistrate of the state, nor of any officer who has received his appointment from a state, or whose appointment has been made with the advice and consent of this Senate; but of a person who is to receive his appointment from the President's sole authority. That no such power as is contained in the provisions of this bill, is necessary for the purpose of executing the laws, or quelling insurrections, is manifest from past experience. Under this constitution we have had one insurrection, and also a powerful combination to resist the execution of the laws. What was the conduct then? Fortunately for our country,

our then Chief Magistrate was both a soldier and a statesman. A statesman who was duly sensible of the importance of keeping the military in subordination to the civil power. In the Western Insurrection, a considerable military force was called out, to the amount of thousands, and marched against the Insurgents, but they were preceded by the Marshal of the district, the Attorney and the Judge. And instead of military execution, the mild process of the civil law was resorted to : and was found sufficient to bring offenders to justice, and maintain the majesty of the laws. The insurrection was quelled, and tranquillity restored to our country. The combination under Fries to resist the execution of the laws, was also suppressed by a resort to the like mild but efficient measures. No suggestion was then made that it was necessary that more of the military should be introduced into our civil code.

The laws of the United States, and the State laws have made ample provisions for calling in the aid of the military, when necessary to execute the laws. By the act of February 28, 1795, the President is clothed with ample power to use military force to execute the laws, observing the necessary prerequisite of a proclamation, and by the ninth section of the same act, the Marshals are clothed with the same power and authority, to enable them to execute their duty, as is given to the Sheriffs in the several States. And that this is sufficient, the experience of every state evinces. Why this attempt to place the execution of the laws, in the first instance, in the hands of the military ? Why this innovation on our ancient usage ? I fear it bodes no good to our country.

Has the embargo, which was *professed* to be laid for the benevolent purpose of "preserving our vessels, our seamen and our merchandize," become so *unpopular*, so *odious*, that it cannot be executed through the mild medium of Courts of Justice ; but that the country must be put under martial law, and the bayonet of the soldier substituted in the place of the Tribunal of Justice ? If so, it ought to be repealed. In a government like ours, resting wholly on the popular voice, no law ought to be continued that will require a military execution.

I do hope, and must hope, until the signature of the President to the act shall be announced to the Senate, that this bill will never pass the different branches, and be approved by the President. The plea that it is *necessary* for carrying the embargo into effect, will not justify the measure. This same plea of *necessity* has always been resorted to by tyrants. It is in times when parties run high, and under popular leaders, that measures are adopted and precedents established, that eventually overturn the liberties of a country.

I do not believe, Sir, that the citizens of the United States are yet prepared to surrender their liberties at the shrine of either foreign or domestic tyranny ; though it should be recommended by the most popular of their favourites. The American people are too well acquainted with the history of former Republics to submit their necks to the yoke, and to wear the chains of slavery, however gilded, and though invited to wear them by the seductive voice of party spirit.

When it shall be discovered (and an attempt to execute this act, if unfortunately it should pass, will open the eyes of the people) and they will discover, that there is an attack on civil liberty, the party dissensions which now distract our unhappy country, and are the cause of so much mischief, will disappear; and *public spirit*. notwithstanding the operation of political soporifics, must be awakened. The people, coming forth in their might, would at once put down the first essay towards the worst of *despotisms*, a *military despotism*.

In my mind, the present prospect excites the most serious apprehensions. A storm seems to be gathering, which portends not a *tempest* on the *ocean*, but *domestick convulsions*.—However painful the task, a sense of duty calls upon me to raise my voice, and use my utmost exertions to prevent the passing of this bill.—I feel myself bound in conscience to declare, lest the blood of those who may fall in the execution of this measure should be on my head, that I do consider this to be an act which directs a mortal blow at the liberties of my country; an act containing unconstitutional provisions, to which the people *are not bound to submit*, and to which in my opinion *they will not submit*,

* Sect. 68. "And be it further enacted, That every collector, naval officer and surveyor, or other person specially appointed by either of them for that purpose, shall have full power and authority to enter any ship or vessel in which they shall have reason to suspect any goods, wares or merchandize, subject to duty, are concealed, and therein to search for, seize and secure any such goods, wares or merchandize; and if they shall have cause to suspect a concealment thereof in any particular dwelling house, store, building, or other place, they or either of them shall upon proper application upon oath, to any justice of the peace, be entitled to a warrant to enter such house, store, or other place (in the day time only) and there to search for such goods; and if any shall be found, to seize and secure the same for trial; and all such goods, wares and merchandize, on which the duties shall not have been paid, or secured to be paid, shall be forfeited.

Sec. 69. And be it further enacted, That all goods, wares or merchandize, which shall be seized by virtue of this act, shall be put into and remain in the custody of the collector, or such other person as he shall appoint for that purpose until such proceedings shall be had as by this act are required, to ascertain whether the same have been forfeited or not; and if it shall be adjudged that they are not forfeited, they shall be restored to the owner or owners, claimant or claimants thereof; and if any person or persons shall conceal or buy any goods, wares or merchandize, knowing them to be liable to seizure by this act, such person or persons shall, on conviction thereof, forfeit and pay a sum double the amount or value of the goods, wares or merchandize so concealed or purchased.

† An Act to authorise the President of the United States to lay, regulate and revoke Embargoes.

Sec. 1. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States be, and he hereby is authorized and empowered, whenever in his opinion the public safety shall require, to lay an embargo on all ships and vessels in the ports of the U. States, or upon the ships and vessels of the United States, or the ships and vessels of any foreign nation, under such regulations as the circumstances of the case may require, and to continue or revoke the same, whenever he shall think proper. And the President is hereby fully authorized to give all such orders to the officers of the

United States, as may be necessary to carry the same into full effect : Provided the authority aforesaid shall not be exercised while the Congress of the United States be in session : And any embargo which may be laid by the President, as aforesaid, shall cease and determine in fifteen days from the actual meeting of Congress, next after laying the same.

Sect. 2. And be it further enacted, That this act shall continue and be in force until fifteen days after the commencement of the next session of Congress, and no longer.

Approved, June 4, 1794.



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